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(5) The percentage of reinsurance contributions received from HHS for the State to be allocated to the applicable reinsurance entity; and

(6) An estimate of the amount of reinsurance payments that will be made to issuers with respect to enrollees within those boundaries.

(e) *Reinsurance payment.* If a State that establishes a reinsurance program intends to modify the attachment point, reinsurance cap, or coinsurance rate from the corresponding parameters specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year, the State must—

(1) Describe those modified parameters in the State notice of benefit and payment parameters; and

(2) Apply the modified parameters uniformly throughout the State.

(f) *Risk adjustment content.* A State operating a risk adjustment program must provide the information set forth in §153.330(a) and the data validation standards set forth pursuant to §153.350 in the State notice of benefit and payment parameters.

Subpart C—State Standards Related to the Reinsurance Program

§ 153.200 [Reserved]

§ 153.210 State establishment of a reinsurance program.

(a) *General requirement.* Each State is eligible to establish a reinsurance program for the years 2014 through 2016.

(1) If a State establishes a reinsurance program, the State must enter into a contract with one or more applicable reinsurance entities to carry out the provisions of this subpart.

(2) If a State contracts with more than one applicable reinsurance entity, the State must:

(i) Ensure that each applicable reinsurance entity operates in a distinct geographic area with no overlap of jurisdiction with any other applicable reinsurance entity;

(ii) Use the same payment parameters with respect to each applicable reinsurance entity; and

(iii) Notify HHS in the manner and timeframe specified by HHS of the per-

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centage of reinsurance contributions received from HHS for the State to be allocated to each applicable reinsurance entity.

(3) A State may permit an applicable reinsurance entity to subcontract specific administrative functions required under this subpart and subpart E of this part.

(4) A State must review and approve subcontracting arrangements to ensure efficient and appropriate expenditures of administrative funds collected under this subpart.

(5) A State must ensure that the applicable reinsurance entity completes all reinsurance-related activities for benefit years 2014 through 2016 and any activities required to be undertaken in subsequent periods.

(b) *Multi-State reinsurance arrangements.* Multiple States may contract with a single entity to serve as an applicable reinsurance entity for each State. In such a case, the reinsurance programs for those States must be operated as separate programs.

(c) *Non-electing States.* HHS will establish a reinsurance program for each State that does not elect to establish its own reinsurance program.

(d) *Oversight.* Each State that establishes a reinsurance program must ensure that the applicable reinsurance entity complies with all provisions of this subpart and subpart E of this part throughout the duration of its contract.

§ 153.220 Collection of reinsurance contribution funds.

(a) *Collections.* If a State establishes a reinsurance program, then—

(1) The State may elect to—

(i) Have the applicable reinsurance entity collect contributions for reinsurance contribution enrollees who reside in that State directly from issuers of health plans; or

(ii) Ensure that the applicable reinsurance entity accepts contributions for reinsurance contribution enrollees who reside in that State with respect to issuers of health plans from HHS.

(2) The State must ensure that the applicable reinsurance entity accepts contributions for reinsurance contribution enrollees who reside in that State

with respect to all contributing entities other than issuers of health plans from HHS.

(b) *Notification of election to collect.* If a State establishes a reinsurance program, then that State must notify HHS by December 1, 2012, if the State elects to collect reinsurance contributions from fully insured plans for the 2014 benefit year, and by September 1 of the calendar year that is two years prior to the applicable benefit year if the State elects to collect reinsurance contributions from fully insured plans for any benefit year after 2014, in each case pursuant to paragraph (a)(1)(i) of this section. The State's notification will be effective for the applicable benefit year and each subsequent benefit year during which activities related to the transitional reinsurance program continue.

(c) *Contribution funding.* Reinsurance contributions collected must fund the following:

(1) Reinsurance payments that will total, on a national basis, \$10 billion in 2014, \$6 billion in 2015, and \$4 billion in 2016;

(2) U.S. Treasury contributions that will total, on a national basis, \$2 billion in 2014, \$2 billion in 2015, and \$1 billion in 2016; and

(3) Administrative expenses of the applicable reinsurance entity or HHS when performing reinsurance functions under this subpart.

(d) *Distribution of reinsurance contributions.* If a State establishes a reinsurance program, HHS will distribute funds collected for reinsurance contribution enrollees who reside in a State to the applicable reinsurance entity for that State (or the applicable reinsurance entities, if more than one, in accordance with the allocation specified by the State pursuant to § 153.210(a)(2)(iii)), less:

(1) The State's pro rata share of the U.S. Treasury contribution described in paragraph (c)(2) of this section; and

(2) The State's pro rata share of administrative expenses incurred by HHS when performing reinsurance functions under this subpart.

(e) *National contribution rate.* HHS will set in the annual HHS notice of benefit and payment parameters for the applicable benefit year the na-

tional contribution rate and the proportion of contributions collected under the national contribution rate to be allocated to:

(1) Reinsurance payments;

(2) Payments to the U.S. Treasury as described in paragraph (c)(2) of this section; and

(3) Administrative expenses of the applicable reinsurance entity or HHS when performing reinsurance functions under this subpart.

(f) *State collections.* If a State elects to have the applicable reinsurance entity collect contributions pursuant to paragraph (a)(1)(i) of this section, the State must ensure that:

(1) The applicable reinsurance entity for the State collects contributions for reinsurance contribution enrollees who reside in that State directly from issuers of health plans in the amounts required under the national contribution rate.

(2) Reinsurance contributions are allocated as required in the annual HHS notice of benefit and payment parameters for the applicable benefit year, such that:

(i) Contributions allocated for reinsurance payments are only used for reinsurance payments; and

(ii) Contributions allocated for payments to the U.S. Treasury are paid to the U.S. Treasury in a timeframe to be established by HHS.

(g) *Additional State collections.* If a State establishes a reinsurance program, it may elect to collect more than the amounts that would be collected based on the national contribution rate set forth in the annual HHS notice of benefit and payment parameters for the applicable benefit year to provide:

(1) Funding for administrative expenses of the applicable reinsurance entity; or

(2) Additional funding for reinsurance payments.

(h) *Administration of additional State collections.* If a State elects to collect additional amounts pursuant to paragraph (g) of this section for administrative expenses or reinsurance payments, then:

(1) The State must notify HHS within 30 days after publication of the draft annual HHS notice of benefit and payment parameters for the applicable

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benefit year of the additional contribution rate that it elects to collect for additional administrative expenses. The State must ensure that the State's applicable reinsurance entity—

(i) Collects these additional amounts for additional administrative expenses from issuers of health plans when the State elects to collect contributions from such issuers under paragraph (a)(1) of this section; and

(ii) Accepts additional amounts for additional administrative expenses from HHS from all contributing entities from which HHS collects in accordance with the State's election under paragraph (a)(1) of this section.

(2) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, the State must ensure that the applicable reinsurance entity collects all additional reinsurance contributions for the purpose of reinsurance payments from all contributing entities.

[77 FR 17245, Mar. 23, 2012, as amended at 77 FR 29236, May, 17, 2012]

§ 153.230 Calculation of reinsurance payments.

(a) *General requirement.* A health insurance issuer of a non-grandfathered individual market plan becomes eligible for reinsurance payments when its claims costs for an individual enrollee's covered benefits in a benefit year exceed the attachment point.

(b) *Reinsurance payment parameters.* If a State establishes a reinsurance program, the State must use, subject to any modifications made pursuant to paragraph (d) of this section, the payment formula and values for the attachment point, reinsurance cap, and coinsurance rate for each year commencing in 2014 and ending in 2016 established in the annual HHS notice of benefit and payment parameters for the applicable benefit year.

(c) *Reinsurance payments.* If a State establishes a reinsurance program, the State must ensure, subject to § 153.240(b)(1), that the reinsurance payment represents the product of the coinsurance rate multiplied by the health insurance issuer's claims costs for an individual enrollee's covered benefits that the health insurance issuer incurs between the attachment point and the reinsurance cap.

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(d) *State modification of reinsurance payment formula.* If a State establishes a reinsurance program, the State may modify the reinsurance payment formula in accordance with the following:

(1) The State may only use one or more of the following methods to modify the reinsurance payment formula:

(i) Increasing or decreasing the attachment point;

(ii) Increasing, decreasing, or eliminating the reinsurance cap; or

(iii) Increasing or decreasing the coinsurance rate.

(2) The State must publish any such modification to the reinsurance payment formula and parameters in a State notice of benefit and payment parameters as described in subpart B of this part.

(3) Any State modification to the reinsurance payment formula pursuant to paragraph (d)(1) of this section must be reasonably calculated to ensure that reinsurance contributions received toward reinsurance are sufficient to cover payments that the applicable reinsurance entity is obligated to make under that State formula for the given benefit year for the reinsurance program.

(4) The State must use a uniform attachment point, coinsurance rate, and reinsurance cap throughout the State.

§ 153.240 Disbursement of reinsurance payments.

(a) *Data collection.* If a State establishes a reinsurance program, the State must ensure that the applicable reinsurance entity collects from health insurance issuers of reinsurance-eligible plans data required to calculate payments described in § 153.230, according to the data requirements and data collection frequency specified by the State in the notice of benefit and payment parameters described in subpart B of this part.

(b) *Reinsurance entity payments.* If a State establishes a reinsurance program, the State must ensure that each applicable reinsurance entity does not make payments to health insurance issuers that exceed contributions received to date by the applicable reinsurance entity.

(1) If a State, or HHS on behalf of the State, determines that reinsurance